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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 318

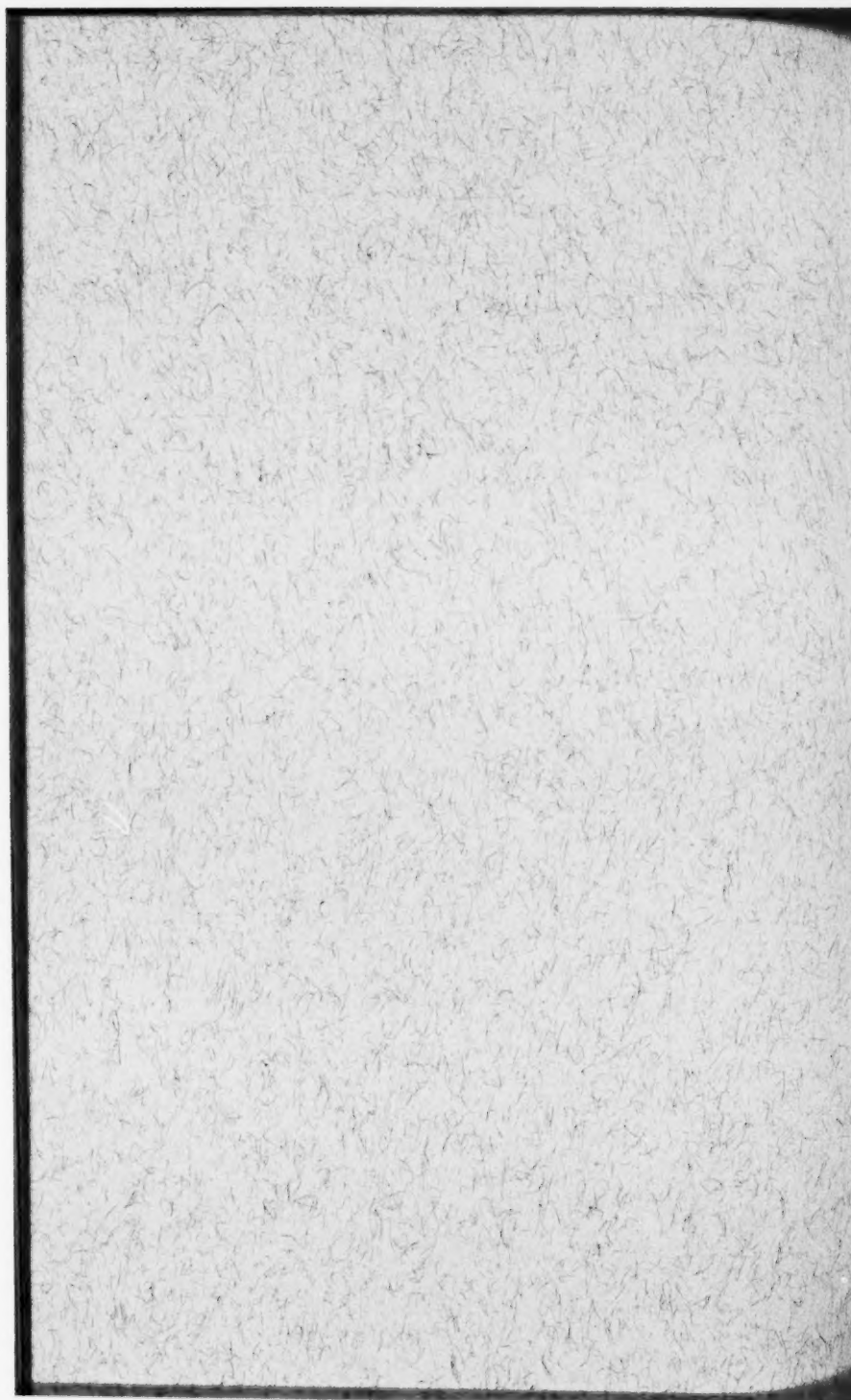
CONSOLIDATED DISTRIBUTORS, INC.,

vs.

CITY OF ATLANTA.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA AND BRIEF IN
SUPPORT THEREOF.

GEORGE C. SPENCE,
Counsel for Petitioner.



INDEX.

SUBJECT INDEX.

	Page
Petition for writ of certiorari	1
Statement of case	1
Jurisdiction	2
Statutes involved	2
Summary statement	3
Decision and judgment below	5
Questions presented	5
Reasons relied on for allowance of writ	5
Brief in support of petition	7
Jurisdiction	7
Applicable law	8
First assignment of error	8
Second assignment of error	11

TABLE OF CASES.

<i>Broadwell v. Carter County</i> , 253 U. S. 251	13
<i>Carstairs v. Cochran</i> , 193 U. S. 10, 16, 17	9
<i>Chicago R. Co. v. Illinois</i> , 200 U. S. 561	13
<i>Hanis Distilling Company v. Baltimore</i> , 216 U. S. 285	10
<i>Lash's Products Co. v. U. S.</i> , 278 U. S. 175	9
<i>In re Miller Distilling Company</i> , 176 Fed. 606	10
<i>Newport Light Co. v. Newport</i> , 151 U. S. 527	12
<i>Taney v. Penn Nat'l Bank</i> , 232 U. S. 177	9
<i>Terre Haute, etc., R. Co. v. Indiana</i> , 194 U. S. 579	13
<i>Thompson v. Commonwealth of Kentucky</i> , 209 U. S. 340	9, 10
<i>Vandalia R. Co. v. State of Indiana</i> , 207 U. S. 319	12
<i>Ward v. Levi Connely</i> , 253 U. S. 17	13



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CONSOLIDATED DISTRIBUTORS, INC.,

vs.

CITY OF ATLANTA.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA.**

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Consolidated Distributors, Inc., respectfully prays that a writ of certiorari issue to review the final judgment of the Supreme Court of the State of Georgia entered in the above cause (R. 22), sustaining a judgment of the Superior Court of Fulton County, Georgia, dismissing petitioner's suit (R. 15).

Statement of Case.

The opinion of the Supreme Court of Georgia (R. 16-22), is reported in 193 Ga. 853.

Jurisdiction.

The judgment of the Supreme Court of Georgia sought to be reviewed was entered April 16, 1942 (R. 22). A motion for rehearing was filed April 28, 1942 (R. 26), and denied May 20, 1942 (R. 26). Notice that application for this writ would be made was filed May 21, 1942 (R. 26).

Jurisdiction of this Court is invoked under *Judicial Code*, Section 237, Title 28, U. S. C., Section 344, as amended.

Statutes Involved.

The *Georgia Constitution*, Article VII, Section 2, paragraph one, provides that "taxation shall be uniform upon the same class of subjects and ad valorem on all property subject to be taxed."

The Fourteenth Amendment to the Constitution of the United States prohibits states from denying "to any person within its jurisdiction the equal protection of the laws."

Chapter 26 of the Internal Revenue Code of the United States, Title 26, U. S. C., Sections 2800 to 3181, comprehensively regulates the manufacture, sale and taxation of liquors (See Act, as amended June 25, 1940, 11:45 a. m., E. S. T., c. 419, Title II, Section 213 (a), 54 Stat. 524; Sept. 20, 1941, 12:15 p. m., E. S. T., c. 412, Title V, Section 533 (a) (b) (d), 55 Stat. 708) and Section 2800 fixes a tax on

"all distilled spirits in bond or produced in or imported into the United States an internal revenue tax at the rate of \$4 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn from bond."

This tax (Sec. 2800 (3) (e) (1)) is

"a first lien on the spirits distilled."

Bonded warehouses under the control of a Federal officer where liquors may be kept in storage are authorized (Sec. 2872), and the leakage of liquors stored therein can be regulated by such officer (Sec. 2880).

An allowance may be "made for leakage for loss by an unavoidable accident." (Section 2889), but when insurance is received "in excess of the market value, exclusive of the tax, upon such spirits," recovery cannot include "such excessive insurance" (Section 2890). Withdrawals from a "general and special bonded warehouse" must be "within eight years from the date of the original entry therein," (Section 2900), and, when withdrawn, a credit allowance may be made for leakage or evaporation (Section 2901).

Summary Statement.

Petitioner, plaintiff in the trial court, sought an injunction against proceedings to collect what it alleged was an illegal tax because its property, certain liquors, were assessed by including taxes required to be paid to the United States.

This petition, to explain the delay in filing the bill, set out proceedings had before the City Tax Officers. These allegations are not here material, because the demurrer on that ground was not sustained by the appellate court (R. 16).

The allegations concerning the validity of the assessment are general, but no special demurrer was urged thereto, and the trial court sustained a general demurrer (R. 15). The allegations of the illegality of the method of assessment, briefly summarized, are "that the agents of the city of Atlanta objected to the valuation placed upon the stock of liquors by petitioner, upon the ground that petitioner had eliminated and deducted from the gross amount of valuation shown upon the inventories, the amount of state

and federal taxes which had either been paid, or were due to be paid when the said liquors were sold" (R. 6).

Petitioner alleged that it claimed to the City authorities that the "amount of taxation necessary for petitioner to pay upon said liquor *whenever it was sold*," was to be obtained by deducting such taxes from the selling price. It was further alleged that petitioner was required to return all of its personal property for ad valorem taxation at such prices as would include the ultimate taxes (state and federal taxes) that it would be necessary for petitioner to pay when the said liquors were sold (R. 6).

Petitioner offered to value its property "upon the actual cost of the liquors" but this assessment was refused (R. 12). Petitioner tendered the amount due, if what it contended was the true value (R. 6-7, 9, 12).

The prayers for relief included:

"That the Court shall decree and determine that the true valuation upon petitioner's said stock of liquors, for the purpose of ad valorem taxation for the City of Atlanta, is the actual value of said stock of liquors less the State and Federal taxes which has been or are to be paid upon the same before the said liquors are sold" (R. 9).

The Supreme Court in its original opinion, held that the method of assessment adopted by the city was lawful (R. 16-20) but on rehearing decided that one issue, that as to taxes to be paid, had not been properly raised (R. 20), and rendered its judgment against petitioner.

No special demurrer was filed or decided in the trial court raising the issue that the pleadings in this respect were too indefinite.

The Decision and the Judgment of the Supreme Court of Georgia.

The court below held that excise taxes paid to the United States could be added to the cost or inherent value of liquors, and that as to taxes to be paid, when the liquors should be within eight years, withdrawn from a government controlled warehouse, the issue had not been properly raised.

Questions Presented.

1. May a subordinate agency, the City of Atlanta, of the State of Georgia add the excise tax paid the United States to the cost in assessing liquor for taxation?

2. May a subordinate agency, the City of Atlanta, of the State of Georgia add the amount of the uncollected excise tax on liquors, levied by the United States and held in bond, to the cost in assessing liquor for taxation?

Reasons Relied On for the Allowance of the Writ.

The Supreme Court of Georgia "has decided a federal question of substance not theretofore determined by this court."

There are, so far as petitioner can find, no decisions of this Court directly applicable to the issue decided by the Supreme Court of Georgia, but the decision of that court is probably not in accord with analogous decisions of this Court. (Rules of this Court, 38 (5) (a).)

The public importance of the issues here presented is obvious. If the system of valuing liquors adopted by the City of Atlanta, respondent hereto, be applied generally, liquor could not, without prohibitive expense to the dealer, be stored in a government warehouse. The Federal laws now authorize such storage for a period of as much as eight years. Nor could the policy of the United States to collect

heavy excise taxes in liquors be continued if the States, Counties and municipalities may tax such tax by adding it to the valuation of the liquors.

A supporting brief is annexed hereto citing authorities which support petitioner's contentions.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Supreme Court of the State of Georgia should be granted.

GEORGE C. SPENCE,
Counsel for Petitioner.

Citizens and Southern
National Bank Building,
Atlanta, Georgia.

